

Conversely, claimant requests that the Appeals Board affirm the Administrative Law Judge's finding that she suffered a work-related injury. But the claimant also requests, in her brief, that the Appeals Board order respondent to pay the past medical expenses

incurred and order respondent to pay claimant seven weeks of temporary total disability benefits instead of the three weeks that were ordered.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The issue raised by the respondent, whether claimant proved an accidental injury that arose out of and in the course of her employment with respondent, is a jurisdictional issue that grants the Appeals Board jurisdiction to review preliminary hearing issues. But the claimant's request for the Appeals Board to order additional temporary total disability benefits and payment of past medical expenses are not preliminary hearing issues that the Appeals Board has jurisdiction to review. See K.S.A. 1998 Supp. 44-534a.

Claimant contends she injured her back at work April 21, 1999. At the time of the injury, claimant testified she was working as a nurse's aide and hurt her back sometime between 2:00 a.m. and 4:00 a.m., the morning of her twelve-hour shift, which started at 6:00 p.m. on April 21, 1999. She testified that at that time she did not notify anyone of the injury because she did not believe the injury was serious.

Claimant was not scheduled to work again until Monday, April 26, 1999, at 6:00 p.m. Claimant's back, however, worsened and, on Saturday, April 24, 1999, she went to respondent's emergency room for treatment. The emergency room medical record indicates claimant gave a history of her back starting to hurt the day before after laying down throw rugs. Claimant testified that the emergency room physician asked her what she had done that particular day to hurt her back. She told the physician that she had not done anything that day, but the day before her back hurt so bad all she was able to do was get dressed and put down some throw rugs.

After claimant was seen in the emergency room, she saw Nelson P. White, M.D., on April 26, 1999. Dr. White's April 26, 1999, medical record does not note how claimant injured her back. He prescribed pain medication, took claimant off work, and placed her in a physical therapy program. On April 28, 1999, the doctor gave claimant a return to work slip with a reduced lifting restriction. Then on May 11, 1999, he limited claimant's lifting to 15 to 20 pounds.

Physical therapy records were admitted into evidence at the preliminary hearing and indicated that claimant gave a history of injuring her back pulling up and turning a patient in bed on April 21, 1999.

Claimant testified she notified the respondent on Monday, April 26, 1999, that she was unable to come to work. Then on April 28, 1999, claimant went into work, reported her injury, and completed an incident report.

Respondent did not return claimant to work after it received the restrictions issued by Dr. White on April 28, 1999, or May 11, 1999.

Claimant's attorney had claimant examined by orthopedic surgeon, William A. Bailey, M.D. His June 8, 1998, report, that summarized the results of his examination, was admitted into evidence at the preliminary hearing. His impression was that claimant had sustained an acute lumbar strain of her low back. Since claimant had no previous history of low-back symptoms, he attributed the strain to her April 21, 1999, work accident. The doctor thought claimant had reached maximum medical improvement and could return to work without restrictions.

Terri Tweedy, respondent's Administrative Assistant, also testified at the preliminary hearing. She testified that claimant called her on April 27, 1999, and inquired as to the amount of discretionary leave time she had accrued because she was going to be off work a few days due to a back injury. Ms. Tweedy testified that claimant told her she was not aware when the injury occurred. But Ms. Tweedy also testified that the claimant told her of helping another employee move a patient at work. Further, Ms. Tweedy testified claimant told her that she helped her mother in the garden and the next day she had experienced severe pain in her back. Claimant denied she told Ms. Tweedy she had worked in her mother's garden. In fact, claimant testified she did not have a garden and her mother did not have a garden.

Respondent contends that claimant fabricated the work-related injury because claimant found out that she had less than ten hours of discretionary leave that she had earned. Respondent argues that the contemporaneous medical records prove that claimant did not injure her back at work, but injured her back while she was placing throw rugs on the floor at home on April 23, 1999.

The Administrative Law Judge had the opportunity to observe both claimant and respondent's Administrative Assistant, Terri Tweedy, testify in person. Therefore, she had the opportunity to judge the credibility of both witnesses. In finding claimant proved she injured her back at work on April 21, 1999, the Administrative Law Judge had to believe claimant's testimony. The Appeals Board finds, as it has in the past, that some deference should be given to the Administrative Law Judge's conclusions as she was able to assess the credibility of the two witnesses from their in-person testimonies. Therefore, the Appeals Board, at this juncture of the proceedings, concludes the Administrative Law Judge's preliminary hearing Order should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Julie A. N. Sample's June 22, 1999, preliminary hearing Order should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1999.

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BOARD MEMBER

c: Michael G. Patton, Emporia, KS  
Ronald J. Laskowski, Topeka, KS  
Julie A. N. Sample, Administrative Law Judge  
Philip S. Harness, Director